THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.5386 OF 2000

13th September, 2007.

Between:

Prabhu Lingam. .. Petitioner.

And

The District Collector, Adilabad and another. .. Respondents.

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.5386 OF 2000

ORAL ORDER:

The land owned by the petitioner, to an extent of Ac.9.00 cents situated in Sy.No.103 of Degaon village, was acquired under the Land Acquisition Act, 1894 (for short "the Act"), for a public purpose vide

notification dated 21.8.1976, published under Section 4(1) of the Act. The declaration under Section 6 of the Act was also published on the same day and possession of the land was taken on 4.6.1977. Subsequently, Award was passed by the 2nd respondent on 29.8.1978 fixing the compensation for the land acquired at the rate of Rs.600/- per acre. However, the said award was passed assuming that the extent of the land acquired from the petitioner was only Ac.5.00 cents. The petitioner having received the compensation under protest, requested the respondents to modify the Award and pay the compensation for the entire extent of Ac.9.00 cents. Since there was no response, the petitioner filed W.P.No.21160 of 1996. The said writ petition was disposed of by this Court by order dated 6.12.1996 with a direction to the respondents to pay the compensation for the remaining extent of Ac.4.00 cents also within two months. In spite of the same, since there was no response, the petitioner was constrained to file Contempt Case No.1284 of 1997. During the pendency of the said Contempt case, the respondents paid the compensation for the remaining extent of Ac.4.00 cents on 22.11.1997, which was received by the petitioner under protest. Having regard to the said fact, the Contempt Case was closed by order dated 1.12.1997 reserving liberty to the petitioner to seek enhancement of compensation in accordance with law.

Thereafter, the petitioner submitted a representation, dated 2.12.1997, before the 2nd respondent seeking reference under Section 18 of the Act. However, the petitioner's request was rejected by memo dated 13.9.1998 stating that since the amount of compensation paid in the year 1978 was received without any protest, there can be no reference under Section 18 of the Act. Aggrieved by the said order, the present writ petition has been filed.

A counter-affidavit has been filed on behalf of the respondents reiterating the stand taken in the impugned memo as under:

> "In reply to para-4, it is submitted that as alleged by (writ petitioner) pattadar, a notice U/s 12(2) of L.A.Act for pronouncement

of orders passed and payment of compensation to an extent of 4.00 acres in Sy.No.103/Dry of Degaon village of Bhainsa Mandal only was issued and accordingly the pattadar attended the office in response to the 12(2) notice issued on 15.11.1997 and **received the compensation on 22.11.1997 under protest and filed a petition U/s 18 of L.A.Act on 2.12.1997** for adjudication to the extent of entire 9.00 acres i.e., included the 5.00 acres land acquired earlier, taking mis-interpretation. The 12(2) notices dated 15.11.1997 would clearly indicate the extent 4.00 acres to which amount is being paid, and the remedy to the writ petitioner was to file the Section 18 petition only to an extent of 4.00 acres, but not for 9.00 acres, which caused the rejection of the same.

I have heard the learned counsel for both the parties and perused the material on record.

As could be seen, the Award was initially passed on 29.8.1978 and the petitioner received the compensation for Ac.5.00 lands long back. Nothing has been placed before this Court to show that the petitioner made any representation seeking reference under Section 18 of the Act within the time prescribed. However, it is not in dispute that so far as the remaining extent of Ac.4.00 cents is concerned, notice under Section 12(2) of the Act was issued on 15.11.1997 and, thereafter, the petitioner made an application under Section 18 of the Act on 2.12.1997 i.e., well within limitation. Hence, there cannot be any dispute with regard to the entitlement of the petitioner to seek reference under Section 18 of the Act for enhancement of compensation so far as the remaining Ac.4.00 cents of land is concerned, for which compensation was paid only on 25.11.1997.

In view of the admitted facts, the impugned memo dated 13.9.1998, to the extent of reference in respect of Ac.4.00 cents is set aside and the writ petition is disposed of directing the 2nd respondent to make the reference under Section 18 of the Act following due process of law so far as Ac.4.00 cents of land belonging to the petitioner acquired under the notification dated 21.8.1976 is concerned, as expeditiously as possible, preferably within a period of

six weeks from the date of receipt of a copy of this order. No costs.

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(G. ROHINI, J.)

13th September, 2007.
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